

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

**APR 26 2006**

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

MIGUEL ANGEL SOTO-ISLAS,

Petitioner - Appellant,

KIMBERLY A. SOTO; KARINA SOTO,  
minors by and through their Guardian Ad  
Litem JOSE JAIME SOTO,

Intervenors - Appellants,

v.

MICHAEL CHERTOFF \*\*, Secretary,  
United States Department of Homeland  
Security; ALBERTO R. GONZALES,  
Attorney General; GLORIA LEE, District  
Director of the Immigration and Customs  
Enforcement,

Respondents - Appellees.

No. 05-55788

D.C. No. CV-04-07175-SVW

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Stephen V. Wilson, District Judge, Presiding

---

\* This disposition is not appropriate for publication and may not be cited  
to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\* Michael Chertoff is substituted for his predecessor Tom Ridge, as  
Secretary of the Department of Homeland Security. Fed. R. App. P. 43(c)(2).

Submitted April 5, 2006\*\*\*  
Pasadena, California

Before: BRIGHT\*\*\*\*, PREGERSON, and ALARCÓN, Circuit Judges.

The agency determined Soto-Islas did not qualify for cancellation of removal under 8 U.S.C. § 1229b(b). He challenged the agency's decision in a petition for review, which this court dismissed in part and denied in part in a memorandum disposition filed February 25, 2004. He later filed a petition for habeas corpus in district court. This appeal follows a district court order dismissing the habeas petition and denying a motion to intervene filed on behalf of his two minor daughters. We dismiss.

The facts are known to the parties and are not recounted here.

Under Section 106(a) of the REAL ID Act of 2005, Pub. L. No. 109-13, Div. B, 119 Stat. 231 (2005), we treat this appeal as a petition for review. Martinez-Rosas v. Gonzales, 424 F.3d 926, 928-30 (9th Cir. 2005). Because the Board of Immigration Appeals affirmed without decision, we review the decision of the

---

\*\*\* The panel finds this case appropriate for submission without oral argument pursuant to Fed. R. App. P. 34(a)(2).

\*\*\*\* The Honorable Myron H. Bright, Senior United States Circuit Judge for the Eighth Circuit, sitting by designation.

immigration judge as the final agency decision. Fajardo v. INS, 300 F.3d 1018, 1019 n.1 (9th Cir. 2002).

Soto-Islas seeks to raise a substantial evidence challenge to the agency's conclusion that he did not establish the ten years of continuous physical presence in this country needed for cancellation of removal. See § 1229b(b)(1)(A). Soto-Islas could have timely raised this issue in his first petition for review to this court. See Lopez-Alvarado v. Ashcroft, 381 F.3d 847, 850-51 (9th Cir. 2004) ("We retain jurisdiction, however, to review for substantial evidence the BIA's non-discretionary factual determinations, including the determination of continuous presence."). Because he did not present the issue in his first petition for review, we will not entertain it now. See 8 U.S.C. § 1252(b)(1), (d)(2); Laing v. Ashcroft, 370 F.3d 994, 997-1001 (9th Cir. 2004); Mondragon v. INS, 625 F.2d 270, 271-72 (9th Cir. 1980).

We need not decide questions relating to the agency's alternative ground that Soto-Islas failed to establish the requisite hardship under § 1229b(b)(1)(D). We also do not reach the motion to intervene filed on behalf of Soto-Islas's two minor daughters in district court, which related to the agency's alternative ground for denying cancellation of removal.

**PETITION FOR REVIEW DISMISSED.**